

Court No. - 9

Case :- HABEAS CORPUS No. - 412 of 2021

Petitioner :- Parvez Thru His Brother Imran

Respondent :- State Of U.P.Thru Secy. Home Lucknow & Ors.

Counsel for Petitioner :- Narendra Gupta

Counsel for Respondent :- Govt. Advocate

Connected with

Case :- HABEAS CORPUS No. - 414 of 2021

Petitioner :- Irfan Thru His Brother Imran

Respondent :- State Of U.P.Thru Secy. Home Lucknow & Ors.

Counsel for Petitioner :- Narendra Gupta

Counsel for Respondent :- Govt. Advocate

With

Case :- HABEAS CORPUS No. - 416 of 2021

Petitioner :- Rahamtullah Thru His Brother Imran

Respondent :- State Of U.P.Thru Secy. Home Lucknow & Ors.

Counsel for Petitioner :- Narendra Gupta

Counsel for Respondent :- Govt. Advocate

Hon'ble Ramesh Sinha,J.

Hon'ble Mrs. Saroj Yadav,J.

(Per Ramesh Sinha, J. for the Bench)

1. At the outset, Sri Narendra Gupta, learned Counsel for the detenues/petitioners have submitted that applications for amendment, bearing C.M. Application No. 53220 of 2021 *in re:* Habeas Corpus No. 412 of 2021, C.M. Application No. 53294 of 2021 *in re:* Habeas Corpus No. 414 (H/C) of 2021 and C.M. Application No. 53175 of 2021 *in re:* Habeas Corpus Petition No. 416 of 2021, are pending.

2. On due considerations, we **allow** aforesaid amendment applications and permit the learned Counsel for the petitioners

[2]

to make necessary amendment in the memo of the writ petition during the course of the day.

3. Questioning the legality and validity of the orders dated 14.08.2020 passed by the District Magistrate, Sitapur (respondent no.3), directing detention of Parvez, Irfan and Rahamtullah in exercise of its power under Section 3 (2) of the National Security Act, 1980 (hereinafter referred to as the '**Act, 1980**'), which was subsequently confirmed by Uttar Pradesh Advisory Board under Section 11 of the Act, 1980 and on the basis of same, the orders for confirmation dated 05.10.2020 and 06.11.2020 have been passed by the Under Secretary, Home (Confidential) Department, Government of Uttar Pradesh (respondent no.2), petitioner/detenu Parvez has preferred Habeas Corpus Petition No. 412 of 2021, petitioner/detenu Irfan preferred Habeas Corpus Petition No. 414 of 2021 and petitioner/detenu Rahamtullah preferred Habeas Corpus Petition No. 416 of 2021, through his brother Imran.

4. In addition to the aforesaid, by means of the amendment, the detenues/petitioners is also seeking a writ of certiorari to quash the order dated 10.02.2021 passed by the respondent no.2- Under Secretary, Home (Confidential) Department, Government of Uttar Pradesh, by which the detention period of the detenues/petitioners has been extended for a period of nine months from the date of detention i.e. 14.08.2020.

5. Since the above-captioned Habeas Corpus petitions arise out of a common factual matrix and law, we are disposing them of by a common judgment.
6. Shorn off unnecessary details, the facts giving rise to the controversy involved in the above Habeas Corpus petitions are as under :-

While Incharge Inspector Ranvir Singh along with Sub-Inspector Sri Tribhuwan Kumar Yadav, S.I. Ramesh Kumar Kannaujia, Head Constable Sanjay Pratap, Head Constable Satya Prakash, Constable Akhilesh Kumar, Constable Harendra Kumar, Constable Shyam Singh, Constable Dipak Shukla were on duty for maintaining law and order in the area as well as searching and checking the wanted persons/vehicles within the area of the police station Talgaon, district Sitapur on 12.07.2020 through Government Vehicle (Tata Sumo), bearing registration no. U.P. 34 G 0660 and in private vehicle, bearing registration no. U.P. 34 G 0505, and reached Emalia Chauraha via village Angrashi, an informer had told them that two butchers of the Vishwan, after slaughtering a cow elsewhere, have brought beef in the house of Rahmatullah in village Emalia and in the house, Rahmatullah and his brother as well as two butchers of the Vishwan have made small pieces of beef for selling and if quickness be made, then, they can be caught at home. On believing the aforesaid information of the informer, the police party raided the house of Rahmatullah and found that five

persons were cutting the lump of the beef in small pieces by banka and as soon as the police party entered into the house, all persons started running away. However, two persons, namely, Irfan (petitioner of Habeas Corpus No. 414 of 2021) and Parvez (petitioner of Habeas Corpus No. 412 of 2021) were arrested on spot, who disclosed the name of Rahamtullah (petitioner of Habeas Corpus No. 416 of 2021) and two others, namely, Kurban and Rafi. Thereafter, beef was kept in a white bag and with the help of the aforesaid two accused persons, one banka, a piece of wood, one knife and one spear were seized and for testing the recovered beef, it was sent to Veterinary Doctor, Parsendi, who, after verifying the same, reported that the recovered beef was of cow.

7. For the aforesaid incident, a case, bearing First Information Report No. 0235, under Sections 3/5/8 of the U.P. Prevention of Cow Slaughter Act, 1955 and Section 7 of the Criminal Law Amendment Act, 2013, was lodged against accused Parvez and Irfan, Rahamtullah (detenu/petitioners herein), Rafi and Kurban at Police Station Talgaon, District Sitapur and detenu/petitioners Parvez and Irfan were arrested on the same day of the incident i.e. on 12.07.2020, whereas detenu/petitioner Rahamtullah was arrested on 13.07.2020. and were sent to jail. Later on, while the detenu/petitioners were in jail in connection with the aforesaid F.I.R., another F.I.R., bearing No. 0250 of 2020, under Section 2 (kha)(17)/3 of

the UP Gangsters and Anti-Social Activities (Prevention) Act, 1986 have been lodged against the detenu/petitioners as well as other co-accused persons, namely, Rafi, Kurban, Mohd. Safiq and Jamil on the basis of single criminal case.

8. While the detenues/petitioners were in jail in connection with the aforesaid criminal cases, the Station House Officer, Police Station Talgaon, District Sitapur had submitted a report dated 01.08.2020 that due to cow slaughtering, a large number of Hindu Community had gathered due to which the public order was badly disturbed and further on account of the act of the detenues/petitioners and co-accused, the sense of insecurity and terror had spread in the whole area. It was also reported that the fallout of the incident had culminated in the chaos, disturbing congenial atmosphere, flaring horrific feeling, affecting the maintenance of public order and anyhow the peace was maintained even though the situation was tense for a period of three days in the village and surrounding villages. Further, the bail application of the detenu/petitioners were rejected by the learned Magistrate-I, Sitapur vide orders dated 22.07.2020, against which they had moved an application before the District & Sessions Judge, Sitapur on 24.07.2020, wherein the hearing date was fixed for 14.08.2020. In these backgrounds, it was reported that under Article 48 of the Constitution of India, it is the duty of the State Government to protect the cow and if the petitioners would be enlarged on bail, he would again indulge

in criminal activity of cow slaughtering which is prejudicial to public order.

9. On receipt of the aforesaid report dated 01.08.2020 of the Station House Officer, Police Station Talgaon, District Sitapur (respondent no.5), the Superintendent of Police, Sitapur (respondent no.4) had referred the matter to the District Magistrate, Sitapur (respondent no.3) for invoking the provisions of Act, 1980 while exercising the power under Section 3 (2) of the Act, 1980. On receipt of the aforesaid report of the respondent nos.4 and 5, the District Magistrate, Sitapur has invoked the provisions of Section 3 (2) of the Act, 1980 and passed the impugned order of detention dated 14.08.2020 against the deteneues/petitioners and also forwarded the copies of the impugned detention order dated 14.08.2020, the grounds of detention as well as other connected papers to the State Government as per the provisions of Section 3 (4) of the Act, 1980. Thereafter, the State Government has placed the matter before the U.P. Advisory Board (Detention) under Section 10 of the Act, 1980 and after confirmation of the impugned order of detention by the U.P. Advisory Board (Detention) under Section 11 of the Act, 1980, the State Government, while exercising the powers under Section 3 (3) of the Act, 1980, has also confirmed the impugned order of detention dated 14.08.2020 vide order dated 05.10.2020 for a period of three months. Thereafter, the State Government, vide

order dated 06.11.2020, extended the detention of the detenues/petitioners for a period of six months.

10. It has been stated by the petitioners that during pendency of the aforesaid process, the detenues/petitioners were released on bail in F.I.R. No. 235 of 2020, under Sections 3/5/8 of the U.P. Prevention of Cow Slaughter Act, 1955 and Section 7 of the Criminal Law Amendment Act, 2013 by the IV Additional District and Sessions Judge/Special Judge (Essential Commodities) Act, Sitapur vide order dated 27.08.2020 in Bail Application No. 997 of 2020. Subsequently, the detenues/petitioners were also enlarged on bail in F.I.R. No. 250 of 2020, under Sections 2 (kha) 17/3 of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 by this Court vide order dated 11.11.2020 in Criminal Misc. Case No. 8724 (B) of 2020.
11. It has also been stated by the petitioners that they have preferred a representation dated 24.08.2020 against the impugned order of detention dated 14.08.2020 to the District Magistrate, Sitapur through the Superintendent of Jail, District Jail, Sitapur but neither the same was rejected nor any order has been passed.
12. Feeling aggrieved by the aforesaid action of the respondents, the detenues/petitioners have filed the above-captioned habeas corpus petitions.

13. Heard Sri Narendra Gupta, learned Counsel for the detenues/petitioners, Sri S.P. Singh, learned Additional Government Advocate for the State/respondents and perused the material brought on record.
14. Learned Counsel for the petitioners argued that it is an admitted fact that co-accused Kurban and Rafi have brought the beef in the house of Rahamtullah, which shows that the petitioners have no role in cow slaughtering. He argued that there was absolutely no material before the detaining authority, which could justify the belief the detaining authority that the acts allegedly committed by the detenues/petitioners were in any way prejudicial to the public order.
15. Elaborating his submission, learned counsel for the petitioner argued that the impugned order of preventive detention was passed by the respondent no. 3 against the detenues/petitioners while they were in prison under judicial custody on account of they being involved in F.I.R. No. 235 of 2020, under Sections 3/5/8 of the U.P. Prevention of Cow Slaughter Act, 1955 and Section 7 of the Criminal Law Amendment Act, 2013. He further argued that there was no material placed before the detaining authority for recording his satisfaction about the release of the petitioners from the jail in near future. In paragraph 06 of the grounds of detention, it has been mentioned that the petitioners, who were confined in District Jail, Sitapur,

was making continuous efforts for obtaining bail and there was strong possibility of the petitioners being released on bail and upon being release on bail, there was all likelihood of the petitioners indulging in activities which would disturb the public order. He argued that the bald observation of the detaining authority that there is likelihood of the petitioner being released on bail and on his being released on bail, he would again indulge in similar activities disturbing the public peace and order and keeping the petitioners in captivity, is contrary from the facts and circumstances of the case and also in contravention of fundamental rights enshrined under Article 21 of the Constitution of India.

16. Lastly, learned Counsel for the detenues/petitioners has pointed out that during pendency of the aforesaid petitions, the respondent no.2 has passed the order dated 10.02.2021 by which the detention period has been extended for a period of nine month from the date of detention i.e. 14.08.2020.

17. To strengthen his submission, learned Counsel for the petitioners has drawn our attention towards a decision rendered by a Co-ordinate Bench of this Court at Allahabad in **Habeas Corpus Writ Petition No. 319 of 2019 : Mehboob Ali Vs. Union of India and 3 others**, decided on 31.05.2019, dismissing the habeas corpus writ petition and has argued that against the judgment and order dated 31.05.2019, Mahboob Ali (detenu/writ petitioner) approached the Hon'ble Supreme Court by

[10]

filings Special Leave to Appeal (Crl.) No. 6921 of 2019, wherein the Hon'ble Supreme Court, vide order dated 30.08.2019, while issuing notice, stayed the preventive detention order and extension thereof. Hence, he prays that the impugned order of detention as well as consequential orders are liable to be quashed.

18. A short counter has been filed by Superintendent of Jail, District Jail, Sitapur, wherein it is stated that the grounds of detention along with all documents have been furnished to the detenues on the date of passing the impugned order of detention i.e. 14.08.2020. Thereafter, information for invocation of NSA against the detenues have also been furnished by the detaining authority to the Central Government, State Government and other authorities through Radiogram dated 14.08.2020. On 20.08.2020, the State Government had approved the impugned order of detention and the same was also served upon the detenues on 20.08.2020 and an information to this effect was also sent to the State Government on 21.08.2020. The representation submitted by the detenues was forwarded on the same day vide letter dated 24.08.2020 to the concerned authority. The approval order dated 20.08.2020, which was passed by the State Government, had been sent to by the detaining authority along with letter dated 02.09.2020, was also served upon the detenues on 02.09.2020 and information to this effect was also served upon the detaining authority. The

[11]

District Magistrate, vide order dated 03.09.2020, has rejected the representation of the detenues/petitioners and same was also communicated to the detenues/petitioners on 03.09.2020. Thereafter, the State Government, vide order dated 14.09.2020, rejected the representation of the detenues/petitioners, which was also communicated through radiogram dated 14.09.2020. The rejection order dated 14.09.2020 was received by the Superintendent of Jail, District Jail, Sitapur on 15.09.2020 and the same was served upon the petitioner on 15.09.2020. On 22.09.2020, the detenues/petitioners were produced before the Advisory Board on 22.09.2020 through Video Conferencing in compliance of the order dated 18.09.2020 passed by the State Government. Thereafter, on receipt of the report of the Advisory Board, the State Government has passed the impugned order dated 05.10.2020, whereby the detention under NSA was confirmed tentatively for three months, which was also served upon the detenues/petitioners. Vide order dated 26.10.2020, the Central Government had rejected the representation dated 24.08.2020 submitted by the petitioners/detenues and the same was also communicated to the detenues/petitioners on 26.10.2020. Thereafter, vide order dated 06.11.2020, the State Government has extended the detention order for further six months tentatively and the same was also served upon the detenues/petitioners on 06.11.2020.

[12]

19. A counter affidavit has also been filed by the respondent no.2/Under Secretary, Home (Confidential), State of U.P., reiterating the contents of the short counter affidavit filed by Jail Superintendent, District Jail, Sitapur. In the counter affidavit filed on behalf of the District Magistrate, Sitapur, it has been contended that the petitioner and other co-accused had committed heinous crime and annoyed the Hindu Community because they were involved in slaughter of cow and from them recovery of beef was made and due to this reason, it had disturbed the public order, which was brought under control because the prompt action taken by the district administration. It has also been stated that when the accused Irfan and Parvez was arrested, cow beef was recovered from their possession and as the news spread, the situation became tense, communal harmony was disturbed and a large police contingent was deployed in the area from various Police Stations to control the situation. In this way, the public order was disturbed. It has also been stated that the decision for invocation of National Security Act against the detenues/petitioners and other co-accused has been taken on the basis of the police report and nature of crime committed by them as they had disturbed the communal harmony, which resulted in serious disturbance of the law and order situation, which was ultimately controlled after deploying number of police force. Thus, the act of the petitioner and other co-accused had adversely affected the public order.

20. In the rejoinder affidavit, the detenues/petitioners have refuted the contents made in the counter affidavit and have stated that the impugned order of detention and its extension have been passed only on account of pendency of one criminal case relating to Cow Slaughtering Act. During the pendency of the aforesaid criminal case, Gangster Act was also slapped upon the detenues/petitioners. It has also been stated that the extended period of the detention order dated 10.02.2021 is illegal as the same has been passed ignoring the fact that other co-accused, Rafi and Kurban against whom the National Security Act was slapped and against them number of criminal cases are pending as has been reflected from the ground of detention itself and have also brought cow beef in the house of detenues/petitioners, have been released on 21.01.2020 while the detenues /petitioners, who neither brought the beef nor was involved in slaughtering, his detention period has been extended for further three months. It has also been stated that the detention period has been extended only on the ground for preventing the petitioners/detenues from releasing on bail and there is no evidence that after releasing on bail, the petitioners/detenues will indulge in activities prejudicial to the public order. It has also been stated that before extension of period for detention by the authorities concerned, the same was not sent before the Advisory Board as has been provided under para-21 of the General Clauses Act, wherein it has been provided that the

decision can be amended or changed by the same process as it was got done earlier and the detention period has been extended without following the due process of law and without approval of the Advisory Board, hence the extension period of detention is itself illegal.

21. We have examined the submissions advanced by the learned Counsel for the parties and gone through the pleadings on record.
22. It transpires from the record that the impugned order of detention together with the grounds of detention were served on the detenues/petitioners on the same day, i.e. on 14.08.2020 when the detenues/petitioners were confined in the District Jail, Sitapur in connection with a case registered as First Information Report No. 0235 of 2020, under Sections 3/5/8 of the U.P. Prevention of Cow Slaughter Act, 1955 and Section 7 of the Criminal Law Amendment Act, 2013, against accused Parvez and Irfan, Rahamtullah (detenue/petitioners herein), Rafi and Kurban at Police Station Talgaon, District Sitapur.
23. It is pertinent to mention here that after lodging the First Information Report No. 0235 of 2020, under Section 3/5/8 of the U.P. Prevention of Cow Slaughter Act, 1955 and Section 7 of the Criminal Law Amendment Act, 2013, another F.I.R., bearing No. 0250 of 2020, under Section 2 (kha)(17)/3 of the UP Gangsters and Anti-Social Activities (Prevention) Act, 1986

[15]

have been lodged against the detenues/petitioners as well as other co-accused persons on the basis of single criminal case and, thereafter, impugned detention order has been passed by the detaining authority but from perusal of the grounds of the detention reflects that the filing of FIR No. 0250 of 2020 under Sections 2(kha)(17)/3 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 has not been mentioned in the grounds of detention. It appears that the factum of lodging FIR No. 0250 of 2020 under Sections 2(kha)(17)/3 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 against the detenues/petitioners has not been brought to the notice of the detaining authority by the sponsoring authority i.e. Station House Officer, Police Station Talgaon, District Sitapur and Superintendent of Police, Sitapur and the detaining authority has passed the impugned order of detention only on the basis of single case i.e. F.I.R. No. 0235 of 2020.

24. The basic grounds for detaining the detenues/petitioners were that on receipt of information from the informer that the detenues/petitioners Parvez, Irfan and Rahmatullah along with two butchers of village Biswan, namely, Rafi and Kurban were cutting the beef for the purposes to sell it, the Incharge Inspector along with other police personnels of police station Talgaon, district Sitapur visited/raided the house of the detenues/petitioners at 5.30 A.M. and the petitioners/detenues Parvez and Irfan were arrested on the spot along with beaf and

[16]

weapons for cutting the beef, however, their associates Rahmatullah, Karim and Rafi were fled away from the spot. The recovered beef was examined by the Veterinary Doctor, Parsendi and after examining, it was verified that the recovered meat was of beef. Thereafter, the aforesaid F.I.R. i.e. F.I.R. 0235 of 2020, against the petitioners/detenues and co-accused Karim and Rafi were lodged at Police Station Talgaon, District Sitapur. On 13.07.2020, petitioner/detenu Rahmatullah and other two co-accused persons, namely, Karim and Rafi were arrested and sent to jail. When the aforesaid news spread in the area, villagers of Hindu community gathered near the house of the petitioners/detenues and all of them were excited and communal amity was disturbed. After great efforts, the police succeeded in assuaging the general public and taking steps for restoring public order. It is further clarified in the grounds of detention that as a result of the acts of the petitioners/detenues and co-accused, the sentiments of the Hindu community were hurt and Hindu-Muslim harmony was adversely affected and an atmosphere of fear and terror was generated, public order was disturbed and the crowd became belligerent. As the relationship between the two communities was adversely affected and disturbed due to the petitioners/detenues' action, hence the detention order was passed as aforesaid.

25. It also transpires from the ground of detention that as a result of the act of the detenues/petitioners, the normal course of the

general public was disturbed. On being satisfied by the report of the Superintendent of Police, Sitapur and Station House Officer, Police Station Talgaon, District Sitapur and further on being satisfied that in order to maintain public order and that there was a likelihood of the petitioners/detenues being released on bail, the detaining authority passed the impugned order detaining the petitioners/detenues under Section 3(2) of the Act, 1980.

26. The main plank of the argument of the learned counsel for the detenues is that since the detenues were in custody of the police authorities for a substantive offence and during that period, another F.I.R. No. 250 of 2020 was registered under the Gangsters Act, therefore, there was no need to direct their preventive detention merely on the basis of a solitary incident of cutting beef in pieces to sell it, which was carried out in the secrecy of their home and that when the said beef was brought by co-accused, Rafi and Karim in the house of the petitioners /detenues, it could not be inferred that the detenues/petitioners on being released from jail would repeat the activities that might be prejudicial to maintenance of public order. Further since the grounds of detention mentioned that the friends of petitioners/detenues had a bad reputation as against them heinous crimes have been registered at police station Vishwan district Sitapur, therefore, because of these extraneous considerations where only a solitary incident of cutting beef

was only involved, the impugned order of detention was a *mala fide* exercise of jurisdiction. It was further contended that the solitary incident of cutting beef in pieces could not have disturbed public order as there was no material to show that any untoward incident had taken place in the village. In fact the report itself mentioned that the public, which had gathered at the spot, was disbursed after being pacified by the police.

27. On the other hand, learned Additional Government Advocate urged that only the subjective satisfaction of the detaining authority that the action of the detenues/petitioners could have disturbed even the tempo of life was sufficient for clamping an order of preventive detention and the same could not be subject to judicial review as the said order was necessary for the protection of society and a balance has to be struck between the needs of the community and the liberty of a citizen. A habeas corpus petition challenging the preventive action by the District Magistrate cannot proceed like an appeal against the detention order and the Court cannot look into the probative value of the evidence available against the petitioners/detenues, nor was the Court empowered to substitute its opinion for the subjective satisfaction of the authority. The cutting of beef to sell it offends religious faith and feelings of a section of the society, which certainly disturbs public tranquility, peace and communal harmony and hence it is a clear cut case of breach of public order which affected the even tempo of society.

28. We have examined the writ petition, counter affidavits, rejoinder affidavit and also considered the rival submissions of the parties as well as perused the impugned orders passed under Sub-section (2) of Section (3) of the Act, 1980.
29. We note that the grounds of detention clearly indicate that the incident had taken place in the secrecy of the petitioners/detainees' house at 5.30 in the morning. It was a solitary incident of cutting cow beef in pieces away from the public eye. There was no resistance when the petitioners/detainees Parvez and Irfan and the other co-accused were being arrested by the police at that time. Further, to the specific averment in the writ petition that the petitioners/detainees had no criminal history and there was no material to indicate that the petitioners/detainees on being released from jail, would again indulge in the activity of cutting cow beef in pieces to sell, there was no specific denial in the counter affidavit of the District Magistrate, which simply mentioned that on the basis of the solitary incident the petitioners/detainees could be preventively detained. Further in the counter affidavit, it has been mentioned that the nature of the activity of the petitioners/detainees itself suggested that the petitioners/detainees may have been involved in slaughtering of a cow. It was also mentioned that so far as the allegation of discriminatory treatment against the petitioners/detainees for being singled out for detention under the National Security Act was concerned, it was refuted by the

[20]

petitioners to the fact that the house belonged to the petitioners, and the other co-accused had brought the beef in the house of the petitioners but they were released from the charges levelled against them.

30. In **Ramveer Jatav Vs. State of U.P. and others** : (1986) 4 SCC 762, the Apex Court has held that it is possible for the detaining authority to assume that the accused could repeat the action, but for reaching that conclusion there must be some material and circumstances on record, to justify such a conclusion. Ramveer Jatav (Supra) was a case of broad daylight murder and it was observed by the Apex Court that it was difficult to infer from a solitary incident that such an act would disturb public order or that if the petitioner was not detained, he would be likely to indulge in such an activity in future.
31. In the instant case, the case of the petitioners/detainees, which are a case of cutting cow beef in pieces in the secrecy of his own house, can at best be described as a matter affecting law and order and not public order. Moreover, there was no material for reaching the conclusion that the petitioners/detainees would repeat the activity in future.
32. The contention of the learned Additional Government Advocate that this is a matter for the subjective satisfaction of the detaining authority and the Court has no jurisdiction to adjudicate on the probative value, and the propriety or

[21]

sufficiency of the ground of the ground of detention of the detaining authority is immune from judicial review is a proposition which cannot be accepted when stated so broadly.

33. In the case of **S.R. Bommai Vs. Union of India** : AIR 1994 SC 1918, the Apex Court has held that even the Presidential satisfaction under Article 356 of the Constitution to impose emergency is not completely immune from judicial challenge although Presidential satisfaction and the satisfaction of the Constitutional machinery is capable of being objectively determined only to a very limited extent. Therefore, in certain cases specially where *mala fide* exercise of power or action on extraneous consideration was concerned, a limited power of judicial review has been conferred even when the President was exercising his powers under Article 356 of the Constitution. But as mentioned by Hon'ble K. Ramaswamy, J in paragraph 150 of S.R. Bommai's case (Supra), the satisfaction of the President cannot be equated with the discretion conferred upon an administrative agency which can be tested on objective material to some extent:

"The satisfaction of the President cannot be equated with the discretion conferred upon an administrative agency, of his subjective satisfaction upon objective material like in detention cases, administrative action or by subordinate legislation."

34. Thus, it is crystal clear that in detention cases, the subjective satisfaction is open to limited judicial scrutiny. Therefore, it

would be wrong to contend that there is complete embargo on the powers of the Court to look at the sufficiency of the ground from any perspective, although the probative value of the material adduced for inferring whether the detenu was engaged in a particular activity, was a matter primarily for the satisfaction of the detaining authority, and the Court could not evaluate it as it would have evaluated material on an appeal.

35. In the present case, we find that learned counsel for the petitioners has not raised any question of fact and has not disputed that no such incident has taken place. His basic contention was that the incident took place in the secrecy of the home of the petitioners and it was not an act, which was intended to cause a conflagration or an act of confrontation where number of cows may have been slaughtered or assault made on persons, who protested against the slaughtering. Furthermore, there is no suggestion that any witness has turned hostile and it has not even been argued by the learned counsel for the petitioners that either the accused has been discharged, acquitted or that the case would end in discharge or acquittal or that there is want of evidence in the case.

36. At this juncture, it would be apt to mention that it cannot be denied that normally in exercise of powers under Article 226 of the Constitution of India, this Court has limitations in considering the sufficiency of the evidence for ascertaining the factual involvement of a detenu, but this Court can certainly

see whether the activities complained of have resulted in an infringement of public order or only involve a law and order issue.

37. The only submission that learned petitioners' counsel has advanced is that on the basis of a solitary incident, where there was no material to infer that repetition was likely, the order of detention was not justified.
38. At the cost of repetition, it would be relevant to mention here that the petitioners and co-accused were mutely arrested when they were found cutting a beef in the wee hours of the morning in the house of the petitioners. We also do not know whether the cause was poverty, lack of employment or hunger, which may have compelled the petitioners and the other co-accused to take such a step. It is thus, a matter of quality and degree whether the act has been done in public gaze and in an aggressive manner with scant regard to the sentiments of the other community or whether it has been done in a concealed manner, which can resolve the question whether the case is one involving public order, or is only a matter affecting law and order.
39. In the case of ***T. Devaki Vs. Government of Tamil Nadu and others***, (1990) SCC 456, the Apex Court observed that merely making averments in the grounds of detention that as a result of an offence in public and in broad day light alarm, fear and a

sense of insecurity was generated in the minds of the public of the area and thereby the detenu could be said to have acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, was not sufficient. Repetition of these words in the grounds are not sufficient to inject the requisite degree of quality and potentiality in the incident in question, but there must be some substantive material to indicate that public order has been jeopardized.

40. In the present case, to the contrary we find that on the arrival of the police in the wee hour, the public had been pacified and disbursed and that the beef and weapons of cutting beefs i.e. banka, wood and knife were recovered and sent to Veterinary Doctor for test. Thus, an act of slaughtering a cow in the secrecy of one's own house in the wee hours probably because of poverty or lack of employment or hunger, would perhaps only involve a law and order issue and could not be said to stand on the same footing as a situation where a number of cattle have been slaughtered outside in public view and the public transport of their flesh or an incident where aggressive attack is made by the slaughterers against the complaining public, which may involve infractions of public order.

41. In **Ramesh Yadav vs District Magistrate, Etah and others :**
AIR 1986 SC 315, the Apex Court has observed as under :

[25]

"6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed. We are inclined to agree with counsel for the petitioner that the order of detention in the circumstances is not sustainable and is contrary to the well settled principles indicated by this Court in series of cases relating to preventive detention. The impugned order, therefore, has to be quashed."

(emphasis supplied)

42. The aforesaid dictum of the Apex Court in **Ramesh Yadav vs District Magistrate, Etah and others (Surpa)** has also been followed by the Apex Court in **Sama Aruna v State of Telangana and another** : (2018) 12 SCC 150.

43. Considering the aforesaid, we are of the opinion that there was no material to indicate that the petitioners/detenues had any criminal history and it was only a surmise based on no material or evidence that the petitioners/detenues might have been earlier involved in such an incident and he may show such a repetitive tendency, in case they will be released on bail.

[26]

44. In view of the above, all the above-captioned habeas corpus petitions succeed and are allowed. The detention order dated 14.08.2020 and impugned consequential orders are quashed. The detenues/petitioners shall be released forthwith unless wanted in connection with some other criminal case.
45. No order as to costs.

(Saroj Yadav, J.) (Ramesh Sinha, J.)

Order Date :- 5.8.2021

Arun/A.K.Singh/Ajit/-